IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 4071 of 2004
Date of Decision: 12.2.2007

Baljit Singh and another ...Appellants

Versus

Pritam Kaur and others ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Manohar Garg, Advocate, for the appellants.

Shri B.S. Bhalla, Advocate, for the respondents.

HEMANT GUPTA, J.

Defendant No.3 is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby suit for mandatory injunction filed by the plaintiff-respondent that she is the owner of the suit property and that the defendant No.3 i.e. the present appellant has taken forcible possession thereof with the help of anti social elements by disobeying the orders of the learned trial Court, was decreed.

In the written statement, the stand of the defendant-appellant is that in a family settlement, the property has fallen to the share of defendant No.1 i.e. the son of the plaintiff and that he has been inducted as a tenant therein by the said defendant and has permitted to raise the construction over the suit property as well. It is thereafter that the appellant has raised construction of a house, boundary wall etc. by spending huge amount.

Both the Courts have recorded a concurrent finding of the fact that defendant-appellant has failed to prove any family

settlement. It was found that the defendants have examined only Baldev Singh, defendant No.3 and that the family settlement is not proved from his statement as he is not a party to the family settlement. Harjit Singh, the person from whom the defendant has allegedly taken the property on rent has not been examined nor there is any other proof or document that there was a family settlement by virtue of which Harjit Singh got the property.

Learned counsel for the appellants has vehemently argued that one Gurbachan Singh father of Harjit Singh was the owner of the suit property and the land was let out by Harjit Singh vide rent note dated 1.4.1988. Thereafter, after the death of Gurbachan Singh in the year 1990, the lease to the extent of share of Harjit Singh is valid and binding on the plaintiff.

However, I do not find any substance in such argument raised by the learned counsel for the appellants. A finding has been returned that it is the plaintiff Pritam Kaur, who is owner of the suit property on the basis of Jamabandi Exhibits P.2 and P.3. Gurbachan Singh, father of defendant No.1 is not the person recorded as owner in the revenue record. Still further, there is no evidence that Gurbachan Singh was in fact, the owner of the land, leased to the appellant by Harjit Singh. Therefore, in the absence of proof of any family settlement and proof of title of Gurbachan Singh, the argument raised has no legal and factual basis to stand.

Learned counsel for the appellants then argued that the suit for mandatory injunction has been filed in respect of the property comprising in Khasra No. 38//16/2. It is pointed out that earlier the plaintiff has filed a suit for mandatory injunction in respect of Khasra No. 36//16/2,

whereas after the amendment, the suit is in respect of Khasra No. 38//16/2. A perusal of the written statement filed by the defendant-appellant shows that the appellant has not disputed the identity of the property in dispute. The parties have understood their case that the subject matter of the suit is the property which is purportedly given on lease by Harjit Singh in favour of the present appellants. Therefore, the appellants cannot be permitted to raise an argument in second appeal for the first time. In fact, the said argument has no factual basis to stand. The findings recorded are the findings of fact and cannot be allowed to be disputed by way of re-appreciation of evidence.

In view of the above, I do not find any patent illegality or irregularity in the findings recorded by the Courts below, which may give rise to any substantial question of law in the present second appeal.

Hence, the present appeal is dismissed.

12-02-2007 (HEMANT GUPTA)
ds JUDGE